

PART 36--RESEARCH AND DEVELOPMENT GRANTS AND AGREEMENTS

§36.1 Purpose and scope. This part prescribes policies and procedures for grants and cooperative agreements for the performance of research and development. Additional policies and procedures that are unique to cooperative agreements under 10 U.S.C. 2371 are contained in 32 CFR 37.

§36.2 Definitions. Other than the terms defined by the following paragraphs, terms used in this part are defined in 32 CFR 21.7.

(a) Applied research. Efforts that attempt to determine and exploit the potential of scientific discoveries or improvements in technology such as new materials, devices, methods and processes. Applied research normally follows basic research but may not be fully distinguishable from the related basic research. The term does not include efforts whose principal aim is the design, development, or testing of specific products, systems or processes to be considered for sale or acquisition; these efforts are within the definition of "development."

(b) Basic research. Efforts directed toward increasing knowledge and understanding in science and engineering, rather than the practical application of that knowledge and understanding. For the purposes of this part, it includes:

(1) Fellowships, research traineeships, and other research-related, science and engineering education.

(2) Research instrumentation and other activities that enhance the infrastructure for science and engineering research.

(c) Broad agency announcement. An announcement of research interests of one or more DoD Components that:

(1) Solicits proposals from all potential recipients that meet the eligibility criteria for the program(s) covered by the announcement.

(2) States those eligibility criteria.

(3) States the evaluation criteria by which proposals will be selected for funding.

(d) Development. The systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of potential new products, processes, or services to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing.

(e) Historically Black colleges and universities. Institutions determined by the Secretary of Education to meet the

requirements of 34 CFR 608.2.

(f) Minority institutions. Institutions that meet the criteria for "minority institutions" specified by 10 U.S.C. 2323. Each DoD Component's contracting activities and grants officers may obtain copies of a current list of institutions that qualify as minority institutions under 10 U.S.C. 2323, based on data provided by the Department of Education, from that DoD Component's Small and Disadvantaged Business Utilization office.

(g) Research. Basic and applied research.

§36.3 Publication of a list of applicable requirements.

(a) The Office of Naval Research shall prepare, maintain, issue, and disseminate "A List of Requirements Applicable to DoD Grants and Cooperative Agreements for Research and Development."¹ This document shall list statutes; Executive orders; OMB, Treasury and other Circulars; DoD Directives and Instructions; and other federal regulations that are relevant to DoD grants and cooperative agreements for research and development.

(b) Grants officers or heads of contracting activities that are aware of applicable statutes, Executive orders, or regulations that are not listed in the compendium described in paragraph (a) of this section shall so notify the Acquisition Directorate, Code 02, Office of Naval Research, 800 North Quincy Street, Arlington, Virginia 22217-5000.

§36.4 General authorities and responsibilities. Except where statute requires otherwise, DoD Components may perform research and development projects by grant or cooperative agreement when:

(a) The recipient is a:

(1) Domestic institution of higher education or other nonprofit organization governed by OMB Circular A-110.²

(2) Domestic governmental organization subject to 32 CFR 33.

(3) Foreign institution of higher education, other foreign nonprofit organization, or foreign government, such as those domestic recipients covered in paragraphs (a)(1) and (a)(2) of this section.

¹ Contact the Office of Naval Research, Code 02, 800 North Quincy Street, Arlington, VA 22217-5000.

² Contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

(b) Such performance is consistent with:

(1) 10 U.S.C. 2358 (whether or not that is the statutory authority under which the award is made). In the opinion of the Head of the DoD Component or his or her designee, the projects must be:

(i) Necessary to the responsibilities of the DoD Component.

(ii) Related to weapons systems and other military needs or of potential interest to the DoD Component.

(2) 31 U.S.C. Chapter 63, as implemented in 32 CFR 21.10. For research and development:

(i) The appropriate use of grants and cooperative agreements is almost exclusively limited to the performance of selected basic and applied research projects and would be appropriate only in exceptional instances for the performance of hardware or system development projects. System development nearly always shall be performed by contract because its principal purpose is the acquisition of specific deliverable items (e.g., prototypes or other hardware) for the benefit of the Department of Defense.

(ii) The usual relationship between the responsible government program manager and the principal investigator of the recipient of a research award does not generally constitute "substantial involvement," for purposes of deciding whether a grant or cooperative agreement is the legally appropriate instrument under 31 U.S.C. Chapter 63. The use of cooperative agreements should be limited to situations where the DoD Component determines that the project would not be possible without extensive collaboration between the Department of Defense and the recipient. Cooperative agreements would be appropriate, for instance, where a recipient's investigator works for a substantial amount of time at a DoD laboratory (or a DoD investigator works at the recipient's facility) or when the collaboration is such that it will lead to a jointly authored report. The government's "substantial involvement" should be of a technical nature (a technical consultation relationship may suffice in some cases). Before entering a cooperative agreement, the DoD Component should clearly define the nature of the collaboration without which the project would not be possible.

§36.5 Competition.

(a) General. Grants officers shall ensure that competitive procedures, as described in paragraph (c) of this section, are used to the maximum extent practicable in the award of all grants and cooperative agreements for research and development.

(b) Specific requirement for grants to universities and colleges.

(1) In accordance with 10 U.S.C. 2361(b), no DoD Component may award a grant by other than competitive procedures to a college or university for the performance of research and development or for the construction of research or other facilities unless:

(i) The provision of law authorizing or requiring award by other than competitive procedures specifically:

(A) States that such provision of law modifies or supersedes the provisions of 10 U.S.C. 2361.

(B) Identifies the particular college or university involved.

(C) States that the grant to be made pursuant to such provision of law is being made in contravention of 10 U.S.C. 2361(a).

(ii) The Secretary of Defense submits to Congress a written notice of intent to make the grant. The grant may not be awarded until 180 days have elapsed after the date on which Congress received the notice of intent. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Deputy Director, Defense Research and Engineering.

(2) Because subsequently enacted statutes may, by their terms, require different results than provided in paragraph (b)(1) of this section, grants officers will consult legal counsel on a case-by-case basis.

(3) The limitation in paragraph (b)(1) of this section applies only if the statute authorizing or requiring award by other than competitive procedures was enacted after September 30, 1989.

(c) Competitive Procedures. Competitive procedures are methods that encourage participation in defense research and development by a broad base of the most highly qualified performers in science and engineering areas of interest. Grants officers are responsible for ensuring that broad competition (i.e., competition among as many eligible proposers as possible, with a published or widely disseminated notice) is used to the maximum extent feasible and practicable. Competitive procedures include, as a minimum:

(1) At least two eligible, prospective proposers.

(2) Actual notice to prospective proposers. The notice may be by publication in the Commerce Business Daily (which may

be accompanied by listings on electronic bulletin boards), or it may take the form of a specific notice that is distributed by the DoD Component to eligible proposers (a specific notice must be distributed to at least two eligible proposers to be considered as part of a competitive procedure). Notices must include:

(i) The area of research and development interest in which proposals are sought.

(ii) The class(es) of potential recipients that are eligible to compete, if the competition is a special competition as described in paragraph (e) of this section.

(iii) The criteria for selecting proposals to be funded and the method for conducting the evaluation.

(iv) Other information needed by prospective proposers in order to prepare and submit proposals, including deadlines for proposal submission.

(3) Impartial review of the merits of proposals received in response to the notice, using the evaluation method and selection criteria described in the notice. In order to be considered as part of a competitive procedure, the selection criteria must be consistent with paragraph (d) of this section.

(d) Principal selection criteria. Except where statute provides otherwise, the two principal evaluation and selection criteria for the award of research and development grants and cooperative agreements shall be:

(1) The technical merits of the proposed research and development.

(2) The potential relationship of the proposed research and development to Department of Defense missions.

(e) Special competitions.

(1) General. Some programs may be competed for programmatic or policy reasons among specific classes of potential recipients. An example would be a program to enhance U.S. capabilities for academic research and research-coupled graduate education in defense-critical, science and engineering disciplines, a program that would be competed specifically among institutions of higher education. All such special competitions shall be consistent with program representations in the President's budget submission to Congress and with subsequent Congressional authorizations and appropriations for the programs.

(2) Historically Black colleges and universities (HBCUs) and other minority institutions (MIs). Increasing the ability of HBCUs and MIs to participate in federally funded, university programs is an objective of Executive Order 12876

(58 FR 58735) and 10 U.S.C. 2323. Whenever practicable, grants officers shall reserve appropriate areas of research interest for exclusive competition among HBCUs and MIs when preparing Broad Agency Announcements or other solicitations for university research programs in which grants or cooperative agreements are to be awarded.

PART 37--"COOPERATIVE AGREEMENTS UNDER 10 U.S.C. 2371"**Subpart A-General****§37.1 Purpose and scope and relation to other parts.**

(a) This part prescribes policies and procedures for award and administration of a class of cooperative agreements (hereafter referred to as "cooperative agreements under 10 U.S.C. 2371") that:

(1) May be used for performing basic, applied, and advanced research projects as authorized by 10 U.S.C. 2358, or for other purposes consistent with paragraph 37.3(a)(3) of this part.

(2) May use the funds-merger authority in 10 U.S.C. 2371(a).

(3) Shall comply with the requirements of subsections (c) and (e) of 10 U.S.C. 2371, whether or not the agreement uses the funds-merger authority in 10 U.S.C. 2371(a).

(b) To use such instruments, a grants officer must have been delegated authority pursuant to DoD Directive 3210.6¹ and the "Interim Guidance for Military Departments and Advanced Research Projects Agency on Grants, Cooperative Agreements and Other Transactions" issued by the Director, Defense Research and Engineering.

(c) Many provisions in other parts of the DoD Grant and Agreement Regulations state their applicability to cooperative agreements, or to financial assistance or nonprocurement generally. Those provisions apply to "cooperative agreements under 10 U.S.C. 2371," unless specific exceptions to those provisions are stated in this part.

§37.2 Definitions. Other than the terms defined by the following paragraphs, terms used in this part are defined in 32 CFR 21.7 and 32 CFR 36.2.

(a) Advanced Research. For the purpose of 10 U.S.C. 2358, advanced research is advanced technology development that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way. Advanced research is most closely analogous to precompetitive technology development in the commercial sector. It does not

¹ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Authorized users may also obtain copies from the Defense Technical Information Center, Cameron Station, Alexandria, VA 22304-6145.

include development of military systems and hardware where specific requirements have been defined. It is typically funded in Budget Activity 2 ("6.3A" Advanced Technology Development), within Research, Development, Test and Evaluation (RDT&E).

(b) Agreement Administrator. The grants officer designated to administer a "cooperative agreement under 10 U.S.C. 2371."

(c) Technical data. Recorded information, regardless of the form or method of the recording, that is of a scientific or technical nature. The term includes computer software documentation, including computer listings and printouts, that are in or may be converted into human-readable form and document the design or details of computer software, explain the capabilities of the software, or provide operating instructions for using the software. The term does not include computer software or data incidental to administration of an agreement, such as financial and/or management information.

§37.3 Policy.

(a) "Cooperative agreements under 10 U.S.C. 2371" may be used to carry out:

(1) Advanced research, as defined in this part.

(2) Basic and applied research, as defined in 32 CFR 36.2.

(3) Programs for which a statute authorizes the use of agreements under 10 U.S.C. 2371. For instance, the use of 10 U.S.C. 2371 agreements is cited in a number of program statutes, such as 10 U.S.C. 2524 authorizing the defense dual-use assistance extension program.

(b) The use of "cooperative agreements under 10 U.S.C. 2371" shall comply with the following conditions:

(1) To the maximum extent practicable, "cooperative agreements under 10 U.S.C. 2371" shall not provide for research that duplicates other research being conducted under existing programs carried out by the Department of Defense.

(2) To the maximum extent practicable, the funds provided by the Government under the cooperative agreement shall not exceed the total amount provided by the other parties to the cooperative agreement. If it is determined for any agreement that this cost matching requirement is impracticable, a grants officer may waive the requirement if approval is obtained in accordance with section 37.4(c) of this part.

(3) "Cooperative agreements under 10 U.S.C. 2371" may be used only when it is not feasible or appropriate to use contracts; grants; or cooperative agreements under other

statutory authorities.

(c) If approved in accordance with section 37.4(c) of this part, a "cooperative agreement under 10 U.S.C. 2371" may require the recipient, as a condition for receiving support under the agreement, to make payments to the Department of Defense or other Federal Agency. Such payments may be credited to the accounts established on the books of the U.S. Treasury Department by 10 U.S.C. 2371(d). Amounts so credited shall be available for:

(1) The same period for which other funds in such accounts are available. Payments received under an agreement should be credited to currently available appropriation accounts, even if the funds that were obligated and expended under the agreement were from fiscal-year appropriations no longer available for obligation. Amounts credited to each currently available appropriation account are available for the same time period as other funds in that account.

(2) The same purpose for which other funds in such accounts are available (i.e., support of advanced research projects provided for in cooperative agreements and other transactions under 10 U.S.C. 2371). Such advanced research projects shall be consistent with applicable programmatic guidance from the Director, Defense Research and Engineering.

§37.4 Responsibilities. Grants officers within a Military Department or the Advanced Research Projects Agency who are authorized to approve cooperative agreements shall:

(a) In accordance with 10 U.S.C. 2371(c), ensure that the conditions in paragraphs (b)(1) through (b)(3) of section 37.3 of this part are met, prior to entering into such agreements.

(b) Ensure that information is reported to the Defense Technical Information Center, in accordance with section 37.6 of this part, on all "cooperative agreements under 10 U.S.C. 2371."

(c) Obtain approval from officials to whom the head of that DoD Component delegated authority (pursuant to paragraphs E.1.a. and E.1.b. in Section I of the "Interim Guidance for Military Departments and Advanced Research Projects Agency on Grants, Cooperative Agreements and Other Transactions" issued by the Director, Defense Research and Engineering), prior to:

(1) Waiving the cost-matching requirement of 10 U.S.C. 2371(c)(2) [see section 37.3(b)(2) of this part].

(2) Entering into an agreement that would require the recipient, as a condition for receiving support under the agreement, to make payments to the Department of Defense or other Federal Agency [see section 37.3(c) of this part].

§37.5 Recipients.

(a) Commercial organizations. An intent of 10 U.S.C. 2371 is to stimulate development of technology with potential for both military and commercial application, and to help remove barriers to integrating the defense and civilian sectors of the nation's technology and industrial bases. In keeping with that intent, the Military Departments and Advanced Research Projects Agency may enter into "cooperative agreements under 10 U.S.C. 2371" with commercial organizations. The potential for awards to commercial organizations constitutes a key difference between "cooperative agreements under 10 U.S.C. 2371" and grants or cooperative agreements for research and development that are entered into under other statutory authorities [the latter may be entered into with educational, nonprofit and governmental organizations, in accordance with 32 CFR 36.4(a)].

(b) Consortia. Another possible use of "cooperative agreements under 10 U.S.C. 2371" is with consortia of legal entities (which may be various combinations of commercial organizations, academic institutions, other nonprofit organizations, and governmental entities). Some consortia may not be legally incorporated, and grants officers should review memoranda of understanding or other documents establishing such consortia, to ensure that terms and conditions of cooperative agreements with such consortia are consistent with the assignment of responsibilities among consortia members. A cooperative agreement with a consortium must either be awarded to the consortium as a single entity that is legally responsible for the advanced research effort to be performed, or all members of the consortium must sign.

§37.6 Reporting.

(a) Requirement for report. The "Interim Guidance for Military Departments and Advanced Research Projects Agency on Grants, Cooperative Agreements and Other Transactions" issued by the Director, Defense Research and Engineering requires each Military Department and the Advanced Research Projects Agency to designate an office to report information on "cooperative agreements under 10 U.S.C. 2371" and "other transactions" under 10 U.S.C. 2358. These reports are in addition to program information and awards data reported in accordance with Subpart D of 32 CFR 21.

(b) Procedures. The office designated by each Military Department and the Advanced Research Projects Agency shall submit reports to the Defense Technical Information Center (DTIC), DTIC-OCF, Cameron Station, Alexandria, VA 22304-6145:

(1) With information specified by DTIC, to compile the report to Congress that is required by 10 U.S.C. 2371(e). As a minimum, this will include, with respect to each agreement:

(i) A general description of the cooperative agreement or other transaction, including the technologies for which advanced research is provided for under such agreement.

(ii) The potential military and, if any, commercial utility of such technologies.

(iii) The reasons for using a cooperative agreement or other transaction, rather than a contract or grant, to provide support for such advanced research.

(iv) With respect to payments, if any, under the authority of 10 U.S.C. 2371(a):

(A) The amounts that were received by the Federal Government in connection with such cooperative agreement or other transaction during the fiscal year covered by the report.

(B) The amounts that were credited to each account established under 10 U.S.C. 2371(d).

(2) In the format specified by DTIC.

(3) In accordance with the schedule specified by DTIC.

(c) Report control symbol. The information required by 10 U.S.C. 2371(e) and the "Interim Guidance for Military Departments and Advanced Research Projects Agency on Grants, Cooperative Agreements and Other Transactions" is reported to the the Work Unit Information Summary Database at DTIC, which is assigned report control symbol DD-A&T(A)1936.

Subpart B-Administration of Agreements Under 10 U.S.C. 2371

§37.10 Purpose of this subpart. This subpart prescribes administrative requirements for "cooperative agreements under 10 U.S.C. 2371."

§37.11 Consortia. A cooperative agreement with a consortium of legal entities (which may be any combination of commercial organizations, academic institutions, other nonprofit organizations, and/or governmental entities), shall be administered as follows:

(a) If the consortium is incorporated or otherwise a legally responsible entity and the agreement is with the consortium, the agreement shall be administered in accordance with the requirements in section 37.12 or 37.13 of this subpart applicable for the particular type of entity (e.g., a nonprofit organization).

(b) If the consortium is not a legally responsible entity and the agreement is signed by each consortium member [see section 37.5(b) of this part], each consortium member shall administer its portion of the agreement in accordance with the applicable requirements in section 37.12 or 37.13 of this subpart.

§37.12 Universities, other nonprofit organizations, and State and local governments.

(a) "Cooperative agreements under 10 U.S.C. 2371" shall be administered in accordance with 32 CFR 31.10(a), which specifies that:

(1) Agreements with universities and other nonprofit organizations shall be administered in accordance with the previous version of OMB Circular A-110² (issued July 30, 1976), pending formal Department of Defense implementation of the recently issued update of that OMB Circular (58 FR 62992, November 29, 1993). In the interim, grants officers may, if the recipient consents, incorporate terms and conditions providing for administration of awards in accordance with the updated Circular A-110.

(2) Agreements with State and local governmental organizations shall be administered in accordance with 32 CFR 33, the Department of Defense implementation of OMB Circular A-102³.

§37.13 Commercial organizations. To the maximum extent practicable, "cooperative agreements under 10 U.S.C. 2371" shall

² Contact the Office of Management and Budget, EOP Publications, 725 17th St. N.W., New Executive Office Building, Washington, D.C. 20503.

³ See footnote 2 to section 37.12(a)(1).

be administered in accordance with 32 CFR 34. In keeping with the intent of 10 U.S.C. 2371 to help remove barriers to integrating the defense and civilian sectors of the nation's technology and industrial bases, grants officers may, in some cases, use alternative provisions described in this section when those specified in 32 CFR 34 would force changes in a commercial organizations's normal business practices, without adding commensurate value in terms of improved stewardship for appropriated funds. The provisions in 32 CFR 34 may be tailored by use of the following (Note that references to OMB Circular A-110 are to the previous version, issued in 1976, pending Department of Defense implementation of the 1993 update of that Circular. Also note that, for those subjects not specifically addressed below, administration shall be in accordance with 32 CFR 34):

(a) Program Income. Provisions of Attachment D to OMB Circular A-110 apply, as provided in 32 CFR 34.1(a)(1). Grants officers must use care in selecting one of the three methodologies for use of program income that are described in Attachment D (deduction, addition, or augmentation of recipients' cost sharing), to ensure that recipients continue to comply throughout the project with cost sharing or matching requirements established in accordance with section 37.3(b)(2) of this part.

(b) Cost sharing and matching. Provisions of 32 CFR 34.2(a)(2) apply. Recipients' contributions may count as cost sharing or matching only to the extent that they are used for authorized purposes of the agreement, consistent with applicable cost principles [see paragraph 37.13(g) of this section].

(c) Standards for financial management systems. Whenever possible, grants officers shall apply the standards for financial management systems in 32 CFR 34.2(a)(3) (i.e., Attachment F of OMB Circular A-110) to agreements under 10 U.S.C. 2371 with commercial organizations. Where application of those financial management standards would require changes to recipients' established accounting systems, grants officers may use alternative approaches in "cooperative agreements under 10 U.S.C. 2371." As a minimum, such alternative approaches shall, as conditions of the cooperative agreement, provide that:

(1) Recipients have and maintain established accounting systems that:

(i) Comply with Generally Accepted Accounting Principles.

(ii) Control and properly document all cash receipts and disbursements.

(2) Recipients maintain adequate records to account for Federal funds received and recipients' cost sharing or matching

that is required under the agreement.

(d) Financial reporting, program monitoring, and program reporting. Grants officers may use the alternative provided in 32 CFR 34.2(a)(4) to the standard approach in Attachments G and H of OMB Circular A-110. In addition, when a "cooperative agreement under 10 U.S.C. 2371" has been structured around payable milestones, the agreement may also require submission of reports that describe the successful completion of payable events [see paragraph 37.13(e)(3) of this section], to serve as the basis for approval of payments by the agreement administrator.

(e) Payment methods. The agreement may provide for:

(1) Cost reimbursement.

(2) Advance payments, under the conditions specified in of 32 CFR 34.2(a)(5)(i), (ii), and (iii).

(3) Payments based on payable milestones. These are payments according to a schedule that is based on predetermined measures of technical progress or other payable milestones. This approach relies upon the fact that, as research progresses throughout the term of the agreement, observable activity will be taking place. At the completion of each predetermined activity, the recipient will submit a report or other evidence of accomplishment to the program manager. The agreement administrator may approve payment to the recipient, after receiving validation from the program manager that the milestone was successfully reached.

(f) Revision of financial plans. For agreements under 10 U.S.C. 2371, grants officers may waive all but two of the requirements in Attachment J of OMB Circular A-110, under which recipients must request prior approval before deviating from budget and program plans that were approved during the award process. Two may not be waived--cooperative agreements must include terms requiring a recipient to immediately request approval from the agreement administrator when there is reason to believe that within the next seven days a revision will be necessary for either of the following reasons:

(1) A change in scope or objective of a project or program (even if there is no associated budget revision requiring prior approval).

(2) A need for additional government funding.

(g) Cost principles. Whenever possible, grants officers shall apply the cost principles in 48 CFR 31 and 48 CFR 231, as provided in 32 CFR 34.2(a)(6), to agreements under 10 U.S.C. 2371 with commercial organizations. Where compliance with those cost principles would require changes to recipients' established cost accounting systems, grants officers may use an alternative

approach in "cooperative agreements under 10 U.S.C. 2371." As a minimum, any alternative approach shall, as a condition of the cooperative agreement, provide that Federal funds and funds counted as recipients' cost sharing or matching [see paragraph 37.13(b) of this section] are to be used only for costs that:

(1) A reasonable and prudent person would incur, in carrying out the advanced research project contemplated by the agreement.

(2) Are consistent with the purposes stated in the governing Congressional authorizations and appropriations.

(h) Rights in technical data and computer software. Given that "cooperative agreements under 10 U.S.C. 2371" entail substantial cost sharing by recipients, grants officers must exercise discretion in negotiating Government rights to technical data and computer software resulting from advanced research under the agreements. The following considerations are intended to serve as guidelines, within which grants officers necessarily have considerable latitude to negotiate provisions appropriate to any of a wide variety of circumstances that may arise:

(1) A goal of the Department of Defense is to encourage recipients to commercially develop technologies resulting from DoD-sponsored research. That will enable increased DoD reliance in the future on the commercial technology and industrial base as a source of readily available, reliable, and affordable components, subsystems, computer software, manufacturing processes, and other technological products for military systems.

(2) Grants officers should generally seek to obtain for the Department of Defense an irrevocable, world-wide license to use, modify, reproduce, release, or disclose for governmental purposes technical data or computer software generated under cooperative agreements. A governmental purpose is any activity in which the United States Government is a party, but a license for governmental purposes does not include the right to use, or have or permit others to use, modify, reproduce, release, or disclose technical data or computer software for commercial purposes.

(3) Licenses of different scope may be negotiated when necessary to accomplish program objectives or to protect the Government's interests. Consult with counsel before negotiating a license of different scope.

(4) To protect the recipient's interests in licenses, technical data, or computer software, cooperative agreements should require the recipient to mark the data or software whose disclosure they desire to protect with a legend identifying the data or software as licensed data/software subject to use, release, or disclosure restrictions. Prior to releasing or disclosing data or software marked with a restrictive legend to

third parties, grants officers should require such persons to agree in writing to use the data or software only for governmental purposes and to make no further release or disclosure of the data or software without the permission of the licensor (i.e., the recipient).